The Social Contract, Unpaid Child Care and Women’s Economic Capability\textsuperscript{1}

Hilde Bojer  
Department of Economics, University of Oslo,  
PB 1095 Blindern, N-0317 Oslo, Norway  
email: hilde.bojer@econ.uio.no

January 25, 2005

\textsuperscript{1}Comments from the two editors are gratefully acknowledged.
1 Introduction

In Women and Human Development, Martha Nussbaum describes her list of capabilities as a ‘freestanding moral idea.’ Her list also represents minimum or threshold capabilities, such that falling short of any one of them is truly tragic, and she writes:

Where women are concerned, almost all the world societies are very far from providing the basic minimum of truly human functioning... I therefore leave the debate about levels of equality for a later stage, when the differences become meaningful in practice. (Nussbaum 2000: 86)

The present paper goes a step farther, and concerns equality of capabilities between women and men. I argue, firstly, that the Rawlsian social contract can be extended to include the rights of women as well as the rights of children. Further, I argue that concern for capabilities follows more plausibly from the original position than concern for what Rawls calls primary goods. Since the just social contract must provide for the right of every child to care, nurture and education, the equality of women and men cannot in justice be obtained at the expense of children’s well-being. These arguments do not depend on the validity of the difference principle.

I then discuss the connection between women’s economic capability and the way society organises child care. Child care is an unavoidable social duty if humankind is to survive. No society can afford to be so liberal that children are neglected. But child care is also an activity that reduces economic capability. Therefore, I argue, social and economic equality between men and women demands equal sharing of child care.\(^1\)

Susan Moller Okin (1989, especially chapter 7) convincingly explains how the burden of unpaid housework makes women economically vulnerable. Let me supply and update her arguments with some facts about my own country, Norway. The Scandinavian countries are considered, and I believe rightly considered, to be the foremost in the world as regards equality between women and men. In particular, the labour force participation rates of Norwegian women and men are almost the same. And yet, in 2002 the average income before tax of women was only 60 per cent of that of men. There are two reasons for this large difference. Firstly, about half of the women in paid work are part timers. Secondly, the earnings of women in full time

\(^1\)Unpaid care for elderly and sick members of the family also falls mainly on women. In the present paper, I concentrate on children, since an argument for sharing the other forms of unpaid care would have to be framed differently from the case of children.
work are about 80 per cent of men’s wages. This last difference is probably mainly due to occupational segregation in the Norwegian labour market, with women strongly concentrated in low paid, mostly caring, professions.\(^2\)

These figures show that full formal and legal equality between the sexes is very far from sufficient to obtain economic equality. In section 5 below, I shall argue that both part time work and women’s low wages are unavoidable consequences of women’s burden of unpaid care work.

2 Extending the social contract

Discussing Rawls and feminism, Nussbaum writes:

> John Rawls’s work offers many insights for feminists thinking about justice. In many respects, his theory can be adapted to meet the most serious criticisms feminists have made against it. (Nussbaum 2003: 514)

Extending the Rawlsian theory to include women and children is straightforward if we accept his specification of the original position, but reject his demand that the parties restrict themselves to treating the situation of adult citizens. The difficulties in Rawlsian theory from a gender point of view stem from the limited scope he gives his social contract, insisting as he does both in *A Theory of Justice* and in several papers, that the social contract is a contract about the rights and duties of human beings as citizens in the public sphere. He also insists (Rawls 1997) that the family, and specifically, the division of labour within the family, is outside the public sphere.

But consider the original position in itself, as Rawls describes it. Free and equal persons meet to decide together and unanimously on the basic structure of society. The decision is made from behind a thick veil of ignorance: they know neither their sex, colour, social position or even their tastes and opinions. On the other hand, we must imagine them as knowing everything else there is to know about human nature and society relevant to their decision.

The situation can be interpreted as one of choice under uncertainty, but the standard economic theory of such choice is not applicable, since the preferences of the parties are unknown. Rawls also maintains that the probabilities are unknown, but here he is not altogether correct. One probability

\(^2\) These and later statistics are the author’s own computations on the Surveys of Income and Wealth produced by Statistics, Norway and supplied to me by the Norwegian Social Science Data Service (NSD). Neither Statistics Norway nor NSD is responsible for my use of the data. Some further results are presented in Bojer 2005.
and one certainty must be known to the parties. Biologically, the probability of being conceived and born as a woman is approximately 50 per cent. And every human being starts life as a helpless baby, born from the womb of a woman. There is no uncertainty at all about this fact of life.

It is therefore clearly rational for the parties to agree on equal political, social and economic rights for women and men. It is also rational for them to agree on a social contract that protects the rights of children, including the rights to nurture and education.\(^3\)

It follows that the social contract must deal with the economic provision for children and their mothers: matters considered by many to be within the province of the family. But it does not follow that other family matters should be the concern of the social contract or the state. Sexual arrangements, in particular, need not be regulated, nor the ways in which adults choose or do not choose to live together. The extended social contract still defines a liberal society, but a liberal society which draws the line between private and public spheres differently from traditional liberalism.

## 3 Income as a primary good

Rawls rejects individual welfare as the good to be justly distributed by society.

> It has always been recognised that the social system shapes the desires and aspirations of its members; it determines in large part the kind of persons they want to be as well as the kind of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and desires but a way of fashioning wants and desires in the future. (Rawls 1975 and 1999 b: 257)

Feminists, of course, have long argued that character traits and preferences that are supposed to be typically feminine or typically masculine are shaped by the gendered society both women and men grow up in. As Simone de Beauvoir famously put it: ‘You are not born a woman, you become one.’\(^4\) It is clear to us that a society that is fair to women will shape the preferences of both men and women differently from one that is unfair.

The fact that society contributes to forming our preferences is a powerful argument for Rawls’s specification of a thick veil of ignorance that hides their

---

\(^3\) More detailed arguments are found in Bojer (2000) and Bojer (2002).

\(^4\) On ne naît pas femme, on le devient. (1949: 13).
very preferences from the parties in the original position. Choosing the basic institutions of society implies choosing preferences to at least some extent.

The parties therefore have to decide on a good or goods to be distributed that do not depend on preferences. Rawls proposes that the parties decide on what he calls ‘primary goods’, defined as goods that ‘normally have a use whatever a person’s rational plan of life. (Rawls 1999a: 54)’ It is, on the face of it, difficult to understand why these primary goods should not be capabilities. As Nussbaum writes: ‘The capabilities approach, as I have articulated it, is very close to Rawls’s approach using the notion of primary goods. We can see the list of capabilities as like a long list of opportunities for functioning, such that it is always rational to want them whatever else one wants. (2000: 88)’

On Rawls’s list of primary goods are ‘rights, liberties, opportunities, the social bases for self-respect (1982: 162)’. These goods are more or less the same as capabilities, or are necessary for securing valuable capabilities, although one could wish to see them further specified. The crucial incompatibility between Rawls’s concept of primary goods and the concept of capabilities seems to be Rawls’s inclusion of income and wealth on his list of primary goods.5

I shall argue that this is not a good choice, given his definition of primary goods and what he wants to obtain by the social contract.6

Firstly, Rawls argues that the goods to be justly distributed in society should constitute ‘a practical and limited list of things (primary goods) which free and equal moral persons, [...], can accept as what they in general need as citizens in a just society.’ (1982: 183) This argument seems to me to be decisive for Rawls’s including income and wealth among primary goods, as well as for his rejection of capabilities as suitable distribuenda. But he does not seem to be aware that the term ‘income’ has several meanings with different and irreconcilable implications for distributional justice. It is not, therefore, a practical concept, easy to measure and to agree on.

Income can be household income or individual income. When household income is the target for distributional policy, it does not matter which

5The position that income is the distribuendum of distributinal justice is sometimes called resourcist, which is an ambiguous term. In economics, resources are thought of as inputs in production. In other words: resources create income. When Ronald Dworkin advocates equality of resources (Dworkin 1981), he uses the term resources in this last sense. If Dworkin is a resourcist (and what else could he be called?), the term resourcist is used to denote two very different positions.

6The same arguments apply to wealth as to income. For brevity’s sake, and to avoid tiresome technicalities, I shall disregard wealth and concentrate on income. For definitions of income and wealth, see Bojer (2003).
member of the household receives the income in the first place. In the vast majority of married (or cohabiting) couples, all over the world, the husband’s income is the larger.\footnote{In Norway in the year 2002, the husband was the main income earner in 72 per cent of households consisting of a couple with one or more children.}

Targeting household income is tantamount to saying that the wife’s income is of no importance: such a policy ignores women’s right to economic independence. On the other hand, if individual income is seen as the target, equality of household income is impossible to achieve as long as people are free to form households or not as they choose.

There are many examples of political disagreement centering on this issue. In Norway, married women, after many years of struggle, obtained the right to independent taxation of their income more than 40 years ago. In many countries this right still does not exist. To continue with the example of Norway: child benefit is universal and paid in cash to the parent chiefly responsible for the care of the child, in most cases, to the mother. But there is a continuous debate both about the universality of the benefit and the method of payment. Many people argue that the benefit should be means tested against household income. The implications would be that wives with well-to-do (not necessarily rich) husbands have no right to child benefit for their children. A final example: households with low incomes pay lower fees in day care centres. But since household income is the criterion, a mother who wants to earn her own income must pay the high charges if her husband earns well, however low her own wages are.

So, in spite of the taxation rules, married women’s economic independence is far from being accepted by all ‘free and equal moral persons’ in Norway.

In the United Kingdom, students from poor backgrounds pay lower tuition fees at universities. But students with well-to-do parents who refuse to pay tuition fees receive no public assistance. I suspect that not all middle class parents are willing to pay for their children, particularly their daughters, to attend university. The British government’s argument for increasing tuition fees was that low fees meant subsidising the rich. No attempt was made to distinguish between parents and children.

There are many other examples of the critical significance of distinguishing between household income and individual income in distributional policy. The point I am making should already be clear: choosing one or the other definition implies choosing a principle of distributional justice. For a liberal egalitarian adhering to ethical individualism the choice should not be difficult: for adults, the primary good must be individual income. But I am not at all convinced that this is what Rawls himself had in mind.
Secondly: income in the sense of monetary or cash income is not a good everyone always wants more of, whatever her preferences. Even that insatiating creature, economic man, prefers leisure to more income once his cash income has reached a certain level; this level will, moreover, vary according to preferences. For wage earners, there is a trade-off between cash income and leisure. There is not always freedom to make this trade-off in the best possible way, but the great majority has some leeway in choosing between work and leisure in a normal market economy. As part time work is growing steadily more common, the amount of time spent in paid work is an increasingly important factor explaining inequality both in household income and individual cash income.

The choice between paid work and other activities is an important one; it is a choice of lifestyle, and depends not only on preferences in a superficial sense, but on what is regarded as the good life. The possibility of free choice here must surely be regarded as an important freedom in the Rawlsian society of liberal egalitarianism. Therefore, in a just society, the important good is not cash income, but the range of choices available between cash income and leisure. This range of choices is what economists call full income. Full income is, roughly, the largest cash income obtainable by a person who does nothing but work and sleep. If it is possible to choose a shorter working day than, say, 16 hours a day 7 hours a week, then full income represents potential cash income, but not necessarily actual cash income. In capability terms, cash income is a functioning while full income represents a capability.

Now, Rawls has agreed that full income might be nearer to what he is aiming at than realised cash income. (Rawls 1974)

But if the primary good logically implied by the Rawlsian social contract is individual full income, then this primary good is, in fact, a capability: the capability of earning an income. I prefer to call it economic capability, and shall discuss the concept further in the next section.

4 Capabilities and income

The capability approach posits human capabilities as the targets of distributional justice. But capabilities are not transferable: they cannot be handed out to the individual by the government or any other institution. In this respect, capabilities are akin to welfare. And, like welfare, capabilities are

---

8A referee pointed out that the unemployed do not have a choice. True, but even with an unemployment rate as high as, say, 15 per cent, a majority of 85 per cent are in paid work.

9See e. g. Rubery et al 1999.
affected by income. As Sen writes: ‘...income - properly defined - has an enormous influence on what we can or cannot do. (1999: 72)’. 10 Adherents of the capability approach therefore need to work out more in detail their views on how to define income, what income as an instrument can and cannot do in promoting capabilities, and how it should be distributed.

The relationship between capabilities and income does not seem straightforward. Sen clearly thinks of commodities - and hence also income, which buys commodities - as inputs into capabilities, as seen by his often used example of pregnant women needing more food. On the other hand Nussbaum has the right to own property and to engage in paid work on her list of minimum or threshold capabilities. This right seems to correspond to a capability of earning an income.

While commodities create capabilities, there also exists a capability to acquire commodities. There is no paradox or contradiction here: one capability may well be an input into another capability. Sen writes: ‘And since enhanced capabilities in leading a life would tend, typically, to expand a person’s ability to be more productive and gain a higher income, we would also expect a connection going from capability to greater earning power, and not only the other way around. (1999: 90)’ What Sen calls earning power, is one part of what I call economic capability.

In Development as Freedom, Sen lists five distinct sources of ‘variations between our real incomes and the advantages - or well-being and freedom - we derive from them (p 70).’ He calls them ‘personal heterogeneities, environmental diversities, variations in social climate, differences in relational perspectives and distribution within the family. (Sen 1999: 73) Now, income, however defined in other respects, measures the access to market commodities. As a measure of advantage, it will always have to be supplemented inter alia by non-market goods.

Sen’s list consists partly of factors modifying the usefulness of income as measure of access to market goods, partly of non-market goods. Environmental diversities and variations in social climate represent non-market goods, and imply that indicators and targets in addition to income are needed. Distribution within the family implies that as regards adults, individual income and not family income is the relevant target.11 Children are another matter; their well-being must be measured separately from their parents, and individual income is not a relevant measure for them. But this still only implies that indicators and targets in addition to income are needed.

---

10 He does not, however, go on to state how to define income properly.
11 From the context, it is clear that Sen takes it as a matter of course that income is household income.
The two other sources more directly affect the question of whether income is a useful distributional target. By ‘differences in relational perspectives’, Sen means that certain valuable capabilities depend, not on our economic position in absolute terms, but on our economic position relative to that of others. An example is social participation. Another is Adam Smith’s famous example of being able to appear in public without shame. The fact that valuable capabilities depend on relative economic status implies that after a certain level of affluence is achieved in a society, distribution is more important than economic growth for securing capabilities. This is one of the most important insights gained by the capability approach. It is outside the scope of the present paper to pursue this perspective. It is not, however, in opposition the rest of my argument, which will concern women’s economic capability relative to that of men.

By ‘personal heterogeneities’, Sen means that people have different needs, and therefore need different amounts of commodities in order to achieve equal capabilities. Needs must here be understood as more basic than preferences; they are objective needs beyond the individual’s immediate control. Examples are the handicapped and the chronically ill who need medication or special equipment in order to be capable of functionings like mobility or hearing - or working. I do not see this as a serious objection against income as one of several targets. It is not all that difficult to tailor the definition of income to differences in needs. Such tailoring is in fact done by welfare states that distribute either physical equipment and medication or cash benefits or both according to need. Child benefits are a case in point, as are tax reliefs for large families, old age pensioners or other cases of special needs. There are a limited number of different cases to be handled, and which are in fact handled by distributional system of existing welfare states.

In the above discussion of the connection between capabilities and income as a source of commodities Sen disregards, as Nussbaum does not, the importance of the way we acquire commodities. We acquire commodities in various ways. They can be received in kind, as when food and other consumption goods are shared in a family, or as handouts of rations in famine relief. We can produce them ourselves, as in subsistence farming or unpaid housework. But the most widespread way of acquiring commodities in the modern economy is by earning an income and using the income to buy commodities; this is in any case true for adult men.

These ways of acquiring commodities are not of equal worth. Women’s struggle for economic emancipation from their husbands, or brothers, or fathers is not - at least, not only - a struggle to obtain more consumer goods. It is a struggle for economic independence and power, for economic autonomy. Being able to earn your own living by means of a socially acknowledged
contribution to society is also an important part of what John Rawls calls ‘the social bases for self-respect’, a primary good. This is why we need the concept of economic capability, or the capability of independently earning an income.

Economic capability must measure economic options, a set of feasible choices, not outcomes of choice. The capability is made of legally enforceable rights. It must, as Nussbaum stresses, be individual: ‘the ultimate political goal is always the promotion of the capabilities of each person. (2000: 74)’

The closest approximation I can find to economic capability is a modified version of individual full income, determined by available time, the wage rate and by non-labour income. The non-labour income part consists of capital income and government or private transfers guaranteed by law. Non-labour income must be a part of economic capability because not everyone is able to work. But if an unemployed, disabled or old person has secure rights to an unemployment benefit, or a disability or old age pension, she still has an economic capability equal to that benefit or pension. It is natural for a Norwegian to think of such income as government transfers, but they could also come from private insurance or savings. The important thing is to distinguish such legally enforceable benefits and pensions from charitable handouts.

To obtain a good measure of economic capability, full income must be adjusted for differences in needs by subtracting the cost of compensating for them.\(^\text{12}\)

Economic capability is partly determined by social and economic features of society: the rate of unemployment and, especially for women, the presence or absence of legal and social pressures hindering paid work. Given the legal and social possibilities of employment, it is determined by the wage commanded in paid work. There exists one more restraint on economic capability, namely time available for engaging in paid work. Such time is constrained by unpaid work, in particular child care.

5 Child care and economic capability

Unpaid work in the care and nurture of children reduce women’s economic capability relative to that of men in two ways: directly by limiting available time in the short term, and indirectly by reducing women’s wage rates in the long term. That it limits time available for paid work in the short run is obvious. The long run effect arises because long absences from paid work

\(^{12}\)A more detailed discussion of economic capability is found in Bojer (2004)
erodes the necessary skills and therefore weakens one’s position in the labour market. So does part-time paid work.

Discussing the conflict between respect for privacy and protection against tyranny within the family in her commentary on Rawls and feminism, Nussbaum writes:

I therefore believe that the solution to this problem, if there is one, lies not in the rejection of Rawlsian liberalism, but in a deeper and more extensive reflection about alternative liberal principles for its solution. This search would do well to begin by imaging and studying the many ways in which groups of people of many different types have managed, in different places at different times, to raise children with both love and justice. (2003: 515)

Here, she frames the problem with beautiful precision: both love and justice is needed. Too often, when women (and men) do their work with love, the economic result is unjust. On the other hand, I do not believe that many times and places can be found where women’s raising of children has received a just economic reward. And I certainly do not see how justice in this respect can be achieved without state intervention of some kind.

Nussbaum also writes: ‘For me, as for Rawls, it is wrong for the state to mandate the equal division of domestic labor or equal decision making in the household.’ (Ibid.: 279) Her reason is: ‘It just seems an intolerable infringement of liberty for the state to get involved in dictating how people do their dishes. (Ibid.: 280)’ But her example misses the mark. Doing the dishes is a trivial and unnecessary chore compared with caring for children.

Child care is radically different from ordinary household chores. Unlike much other unpaid work, child care cannot be regarded as a hobby, voluntarily chosen. It is a duty. Unpleasant household chores can be mechanised, put off, or at a pinch, left undone. If the husband refuses to do his share of the laundry, the wife can retaliate by refusing to wash his dirty underwear. But if he refuses to change the baby’s nappies, she has no choice but to do it herself. Children rely absolutely on provision and care from others. And society cannot survive without children. Therefore, there must be adults in society who give their time and effort to children. And therefore no society can afford to become so liberal that child care is chosen away. And therefore, finally, demanding equal shares of child care is different from demanding equal shares in household work generally.

It is obvious that if mothers and fathers (biological or social) were to take equal shares of caring for children, the main hindrance for economic equality between the sexes would be removed. But is equal sharing also a necessary condition for such economic equality? I believe it is.
Love. Children must be raised with love. The implication is that child care should not be wholly professionalised, nor should it be taken wholly over by the state. Private or government run crèches and day care centres have their place in child care, but not 24 hours a day. Full time nannies are only feasible if their wages are very low relative to the mothers who hire them. If these nannies wish to become mothers, they will certainly not be able to afford nannies themselves. Some part of child care must take place outside the market and for love, not money.

Justice. One possibility of achieving economic justice might be economic compensation of some kind to mothers (and fathers) for the loss of income due to caring for children. Such compensation is given in the Scandinavian countries in the form of paid leave in connection with the birth of a child; in Norway, nearly a year (48 weeks). The parents may share the leave if they so wish. The cost is carried by the public social insurance system. Private insurance against becoming pregnant is, of course, not feasible. It is also not feasible to let employers cover the costs; hiring women employees would become too expensive.

Children need care and time from their parents for longer than this paid leave. But paying women the full cost of staying at home for longer than the first year would be very costly. They would have to be compensated not only for the time actually spent at home, but also for the loss of future earnings due to long time absence from the labour market. Also, the taxpayers should consider what they are paying for. Looking after one or two children takes time, but is not a full time job as they approach school age. Some of the time paid for by the public would be spent on hobbies and on services to healthy adult men. Finally, is it desirable to spend public money on keeping mothers isolated in the home? In modern economies, the work place is important for social interaction and personal development as well as for earning money.

In short, I do not believe that compensation in the form of ‘housewife salary’ is either politically or economically feasible.

But it is also exhausting to combine family responsibilities with a full time job. As long as women carry the main responsibilities for children and family, they will either have to stay away from paid work for several years or work part time, as many do. In both cases they become second class employees, commanding lower wages than their men.\footnote{On this, see also Okin (1989).} It is standard theory of labour economics that both seniority and on-the job- training are of importance for wages. On the other hand, people become less productive and more difficult to employ the longer they are absent from the labour market. This holds
true for both men and women.\footnote{See e.g. Manning 2003}

The only feasible way of achieving just equality between women and men is by equalizing their shares of unpaid child care. Much can be done towards achieving such equality without coercive intrusion into the family. To give one more example from my own country: some years ago, paternity leave was introduced. This is a paid child care leave that only takes effect if it is taken up by the father while the mother is in paid work. It is not, however, compulsory. This arrangement has been a resounding success: 90 per cent of fathers use the opportunity. Young men wheeling prams and comforting crying babies have become a common sight in the streets of Oslo.

It is possible to make paternity leaves compulsory. It is also possible to legislate for shorter working hours and limitation of overtime, thus giving fathers the physical possibility of giving time to their children. No society can, of course, by legislation force fathers (or mothers) to feel love and a sense of duty towards their children. But the arrangements outlined will make it easier for those fathers who wish to do their part, as well as strengthen the hands of mothers with reluctant partners.

Will further coercion of unwilling fathers be out of place in a liberal society? The liberalism Nussbaum defends, as I understand it, demands freedom for all except in so far as other people’s freedom is not thereby hindered. But choosing life styles that cannot be combined with care and nurture of children is free-riding on the efforts of others. Fathers, in particular, can only neglect their children at the cost of mothers’ lack of freedom - and, I believe, at the cost of children developing their capabilities.

Rawls writes that (gendered division of labour) ‘is connected with basic liberties, including freedom of religion.’ Now, it is difficult to see how shirking the duty to care for one’s children can be a basic liberty. On the other hand, freedom of religion is of course a basic liberty. I do not know to which extent the gendered division of labour in child care is fundamental to some of the world’s religions. But even if it were, I can only endorse Nussbaum’s statement that ‘The state and its agents may impose a substantial burden on religion only when it can show a compelling interest. But, second, protection of the central capabilities of citizens should always be understood to ground a compelling state interest...’ (2000: 202)

6 References

Beauvoir, S. de (1949), Le deuxième sexe, II, Gallimard (Folio), Paris.


Nussbaum, M. C. (1999), Sex and Social Justice, Oxford University Press.


